

Office of Personnel Management

§ 550.182

continue to receive an existing aggregate rate or be paid premium pay on an annual basis.

(d) Except as otherwise provided by statute, an agency may not use subsequent increases in an employee's rate of basic pay to redetermine or increase the employee's existing aggregate rate. However, these increases shall be used for other pay purposes, such as the computation of retirement deductions and annuities, payment of overseas allowances and post differentials, and determination of the highest previous rate under part 531 of this chapter.

(e) When an agency elects to pay an employee premium pay on an annual basis, he is entitled to continue to receive hourly premium pay properly payable under sections 5542, 5543, 5545 (a) and (b), and 5546 of title 5, United States Code, until his base pay plus premium pay on an annual basis equals or exceeds his existing aggregate rate. When this occurs, the agency shall pay the employee his base pay plus premium pay on an annual basis.

(f) Except when terminated under paragraph (e) of this section, an agency shall continue to pay an employee an existing aggregate rate so long as:

(1) He remains in a position to which § 550.141, § 550.151, or § 550.162(c) is applicable;

(2) His tour of duty does not decrease in length; and

(3) He continues to perform equivalent night, holiday, and irregular or occasional overtime work.

(g) If an employee who is entitled to an existing aggregate rate moves from one position to another in the same agency, both of which are within the scope of section 5545(c) of title 5, United States Code, he is entitled to be paid an existing aggregate rate in the new position such as he would have received had he occupied that position when the agency elected to make section 5545(c) applicable to it.

PAY FOR SUNDAY WORK

§ 550.171 Authorization of pay for Sunday work.

(a) A full-time employee is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to 25 percent of his or her rate of basic pay

for each hour of Sunday work (as defined in § 550.103) and each hour that would be Sunday work but for the placement of the employee in paid leave or excused absence status.

(b) An employee is not entitled to Sunday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

[60 FR 33098, June 27, 1995, as amended at 60 FR 67287, Dec. 29, 1995; 64 FR 69175, Dec. 10, 1999]

§ 550.172 Relation to overtime, night, and holiday pay.

Premium pay for Sunday work is in addition to premium pay for holiday work, overtime pay, or night pay differential payable under this subpart and is not included in the rate of basic pay used to compute the pay for holiday work, overtime pay, or night pay differential.

LAW ENFORCEMENT AVAILABILITY PAY

§ 550.181 Coverage.

(a) Each employee meeting the definition of *criminal investigator* in § 550.103, and fulfilling the conditions and requirements of 5 U.S.C. 5545a and §§ 550.181 through 550.186, must receive availability pay to compensate the criminal investigator for unscheduled duty in excess of the 40-hour workweek based on the needs of the employing agency, except as provided in paragraph (b) of this section.

(b) Any Office of Inspector General that employs fewer than five criminal investigators may elect not to cover such criminal investigators under the availability pay provisions of 5 U.S.C. 5545a.

[64 FR 4520, Jan. 29, 1999]

§ 550.182 Unscheduled duty.

(a) *Unscheduled Duty Hours.* For the purpose of availability pay, unscheduled duty hours are those hours during which a criminal investigator performs work, or (except for a special agent in the Diplomatic Security Service) is determined by the employing agency to be available for work, that are not—

(1) Part of the 40-hour basic workweek of the investigator; or

(2) Regularly scheduled overtime hours compensated under 5 U.S.C. 5542 and § 550.111.

(b) *Regularly Scheduled Overtime Hours.* For criminal investigators receiving availability pay, regularly scheduled overtime hours compensated under 5 U.S.C. 5542 and § 550.111 are those overtime hours scheduled in advance of the investigator's administrative workweek, excluding—

(1) The first 2 hours of overtime work on any day containing a part of the investigator's basic 40-hour workweek, as required by § 550.111(f)(1); or

(2) The first 2 hours of overtime work performing protective duties authorized by section 3056(a) of title 18, United States Code, or section 2709(a)(3) of title 22, United States Code, on any day containing a part of the investigator's basic 40-hour workweek, unless the investigator performs 2 or more consecutive hours of unscheduled overtime work on that same day.

(c) *Actual work hours.* To be considered to be performing work under paragraph (a) of this section, a criminal investigator must be performing work as officially ordered or approved, including work performed without specific supervisory preapproval, if circumstances require the criminal investigator to perform the duty to meet the needs of the employing agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval).

(d) *Availability Hours.* To be considered available for work under paragraph (a) of this section, a criminal investigator must be determined by the employing agency to be generally and reasonably accessible to perform unscheduled duty based on the needs of the agency. Generally, the agency will place the investigator in availability status by directing the investigator to be available during designated periods to meet agency needs, as provided by agency policies and procedures. Placing the investigator in availability status is not considered scheduling the investigator for overtime hours compensated under 5 U.S.C. 5542 and § 550.111. Availability hours may include hours during which an investigator places himself or herself in avail-

ability status to meet the needs of the agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval). A special agent in the Diplomatic Security Service may not be credited with availability hours and will be credited with only hours actually worked.

(e) *Ensuring availability.* Except as provided in paragraphs (e) and (f) of this section, an employing agency shall ensure that each criminal investigator's hours of unscheduled duty are sufficient to enable the investigator to meet the substantial hours requirement in § 550.183 and make the certification required under § 550.184.

(f) *Voluntary opt-out.* Notwithstanding paragraph (d) of this section, an employing agency may, at its discretion, approve a criminal investigator's voluntary request that the investigator generally be assigned no overtime work (including unscheduled duty) for a designated period of time because of a personal or family hardship situation. The investigator must sign a written statement documenting this request and his or her understanding that availability pay will not be payable during the designated period.

(g) *When availability pay is suspended.* The employing agency is not subject to the requirement of paragraph (d) of this section in the case of a criminal investigator for whom availability pay is suspended in accordance with § 550.184(d) due to denial or cancellation of the required certification based on—

(1) Failure to perform unscheduled duty as assigned or reported; or

(2) Inability to perform unscheduled duty for an extended period because of a physical or health condition.

[59 FR 66151, Dec. 23, 1994, as amended at 64 FR 4520, Jan. 29, 1999]

§ 550.183 Substantial hours requirement.

(a) A criminal investigator shall be eligible for availability pay only if the annual average number of hours of unscheduled duty per regular workday is 2 hours or more, as certified in accordance with § 550.184. This average is computed by dividing the total unscheduled duty hours for the annual period